

FILED

July 22 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. OP 10 0326

JOHN FITZGERALD,

Defendants and Appellants,

-v-

MISSOULA COUNTY JUSTICE COURT  
OF MISSOULA COUNTY, MONTANA,  
DEPT. #2, HON. KAREN A. ORZECH,

Plaintiffs and Appellees,

FILED

JUL 22 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

ORIGINAL

AFFIDAVIT OF ERRATA

STATE OF MONTANA )

:ss

County of Missoula )

My name is Paul Cooley and I swear to the truth of the following facts under penalty of law according to my personal knowledge and belief and as an officer of the Court:

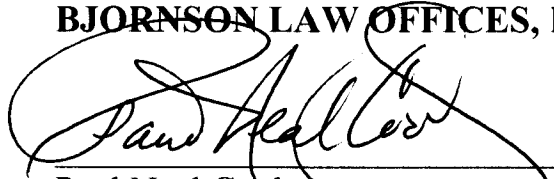
1. I was in attendance at the JP Court trial on September 25, 2010. Mr. Jason Marks and Mr. Fred Van Valkenburg were not in attendance. Other representatives of the County, not signators to their brief, were representing the County that day.

2. In the State's reply on page 2 they state that "The Court offered to allow Fitzgerald to continue the trial if he wished to have additional time to prepare".
3. This statement is false. The JP Court ( Hon. K. Orzech) did not offer to continue the trial. To the contrary, she indicated that we were going to trial immediately on the Second Amended Charge as the change was one of form only. I was prepared with an alibi defense on September 25, 2010. I was not prepared to defend the matter on the merits of his conduct nor did I feel that the Court should have allowed the amendment, as a matter of law.
4. As such, I was then forced to either go to trial or move to continue the trial to seek to have her untimely allowance of the amendment overruled. I was aware that the normal remedy for an error at JP Court is a trial de novo at District Court and I felt that if I went to trial, I would be prejudicing my client's rights. I then consulted with my client, and moved to continue the trial. The State's attorney, agreed that the appropriate response was to allow the amendment. The Court then reluctantly agreed to continue the trial and released the Jury from service.
5. I am aware that the Court does not want another brief, but I felt it important to note that the facts alleged by the State, are not correct and Mr. Marks is not a person who was in the position to make such assertions.

6. Further your affiant sayeth naught.

DATED this 20<sup>th</sup> day of July, 2010.

**BJORNSEN LAW OFFICES, P.C.**

  
Paul Neal Cooley  
Attorney for Appellant

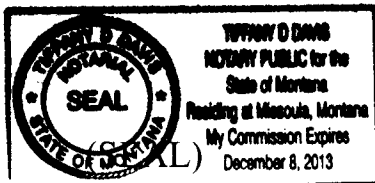
STATE OF MONTANA )

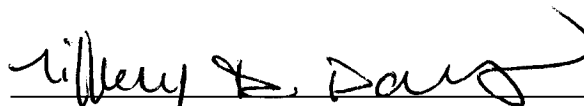
:SS

County of Missoula )

On this 21 day of July, 2010, before me a Notary Public in and for said State, personally appeared **Paul Neal Cooley**, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the above day and year.

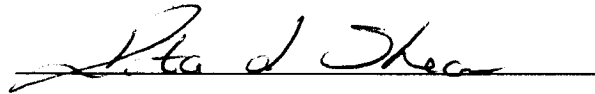


  
Notary Public for the State of Montana  
Printed Name: Tiffany D. Davis  
Residing at: Missoula  
My commission expires: December 8, 2013

## CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of July, 2010, I mailed a copy of the proceeding document, postage prepaid upon the following:

Missoula County Attorney  
Missoula County Attorney's Office  
200 West Broadway  
Missoula, Montana 59802

A handwritten signature in cursive script, reading "Rita J. Shea", is written over a horizontal line.